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Attorneys for Defendant, COSTCO WHOLESALE CORPORATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KENNY DU,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION,
COSTCO WAREHOUSE NO. 464; and
DOES 1 through 20, inclusive,

Defendant.

State Case No.: 34-2022-00316817

DEFENDANT COSTCO WHOLESALE CORPORATION'S NOTICE OF REMOVAL

[DIVERSITY JURISDICTION]

Complaint filed: Mar 15, 2022

**TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO PLAINTIFF
AND HIS ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that Defendant COSTCO WHOLESALE CORPORATION hereby removes the matter Kenny Du v. Costco Wholesale Corporation; Costco Warehouse No. 464; and DOES 1-20 inclusive, from the Superior Court of California, County of Sacramento, Case No. 34-2022-00316817 to the United States District Court for the Eastern District of California, under 28 U.S.C. §§ 1441(b) and 1446(b)(3). Copies of the pleadings and other papers served on the removing defendants in the above-described action are attached to this Notice of Removal as required by 28 U.S.C. § 1446. (See **Exhibits A, B, C, and D.**)

I. STATEMENT OF JURISDICTION

1. As the appended record demonstrates, the action pending in the state court is a civil matter with the original diversity jurisdiction of the federal district courts under 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between the litigants, and the amount

1 in controversy exceeds \$75,000.00.

2 2. Based upon information and belief, Plaintiff was a California citizen and resident
3 of the County of Sacramento, California on February 1, 2021, the date of the alleged incident;
4 based on information and belief, Plaintiff was a citizen of California and resident of the County of
5 Sacramento, California when he filed the Complaint on March 15, 2022; and based upon
6 information and belief, Plaintiff is a citizen of California and resident of the County of Sacramento,
7 California at the time of filing of this Notice of Removal. (*See* Plaintiff's Complaint, ¶ 2, attached
8 herewith as **Exhibit A.**)

9 3. Defendant COSTCO WHOLESALE CORPORATION was on February 1, 2021,
10 the date of the subject incident alleged by Plaintiff, and on March 15, 2022, the filing date of
11 Plaintiff's Complaint, a Washington Corporation with its principal place of business in Issaquah,
12 Washington. At the time of filing this Notice of Removal, Defendant is a Washington Corporation
13 with its principal place of business in Issaquah, Washington. The purported Defendant COSTCO
14 WAREHOUSE NO. 464 is not a separate legal entity but rather a part of Defendant COSTCO
15 WHOLESALE CORPORATION.

16 4. Plaintiff claims to have suffered general damages and special damages. (*See*
17 Statement of Damages, attached as **Exhibit B.**)

18 5. On April 29, 2022, Plaintiff asserted in his Statement of Damages, prepared by his
19 counsel, that he has incurred some \$5,120,000.00 in total damages due to the alleged incident at
20 Costco on February 1, 2021. (*See* Statement of Damages, attached as **Exhibit B.**)

21 6. Thus, because this action involves citizens of different states and the amount in
22 controversy exceeds \$75,000, diversity jurisdiction exists.

23 **II. VENUE**

24 7. This action was filed in the Superior Court of California for the County of
25 Sacramento. Venue properly lies with the United States District Court for the Eastern District of
26 California as the district and division embracing the geographic locations where the action is
27 pending. (*See* 28 U.S.C. §§ 84(b) 1441(a).) Defendant is a corporation doing business in the
28 County of Sacramento. (Complaint, ¶ 1.) Consequently, the alleged acts and events Plaintiff

complaints of occurred in this judicial district. (28 U.S.C. § 1391(a).)

III. INTRADISTRICT ASSIGNMENT

8. Assignment to the United States District Court for the Eastern District in California sitting in Sacramento is proper under 28 U.S.C. §§ 1331 and 1441(a) and Eastern District of California Rule 120(d) because the state court action was filed and is pending in the County of Sacramento and Plaintiff is a citizen of California and the alleged acts and events Plaintiff complains of occurred in Sacramento County.

IV. PLEADINGS, PROCESS, AND ORDERS

9. On March 14, 2022, Plaintiff filed a Complaint in Sacramento County Superior Court alleging negligence and premises liability against Defendant COSTCO WHOLESALE CORPORATION. A copy of the Complaint is attached as **Exhibit A**.

a. Plaintiff in his Statement of Damages, based on information and belief, prepared by his counsel, asserted that he has incurred some \$5,120,000.00 in total damages due to the aforementioned incident at Costco on February 1, 2021. A copy of Plaintiff's Statement of Damages was previously attached as **Exhibit B**.

b. On April 12, 2022, Defendant COSTCO WHOLESALE CORPORATION filed an Answer in Sacramento County Superior Court in response to the Complaint. (*See* Defendant's Answer, attached as **Exhibit C**.)

V. DIVERSITY OF CITIZENSHIP

10. A corporation is a citizen of its state of incorporation and the state in which its principal place of business is located. (28 U.S.C. § 1332(c)(1); *Hertz v. Friend*, U.S. 77, 80 (2010).) A corporation's principal place of business is "... the place where a corporation's officers direct, control, and coordinate the corporation's activities. It is the place that Courts of Appeal have called the corporation's 'nerve center.'" (*Id.* at pp. 92-93.) A corporation's "nerve center" is usually its headquarters. (*Ibid.*)

11. Defendant COSTCO WHOLESALE CORPORATION could ascertain from the face of the Complaint that Plaintiff was a California citizen. (Complaint, ¶ 2.) From the face of the

1 Complaint, Defendant could likewise ascertain that Plaintiff was a citizen of the County of
2 Sacramento. (Complaint, ¶ 2.) The Complaint was served on March 22, 2022.

3 12. On April 29, 2022, Defendant COSTCO WHOLESALE CORPORATION
4 received Plaintiff's Statement of Damages for \$5,120,000.00, which exceeds \$75,000.00.
5 (Attached hereto as **Exhibit B.**)

6 13. Defendant COSTCO WHOLESALE CORPORATION was on February 1, 2021,
7 the date of the subject incident alleged in Plaintiff's Complaint, and on March 15, 2022, the filing
8 date of Plaintiff's Complaint, a Washington Corporation with its principal place of business in
9 Issaquah, Washington, and is the only defendant that has been served with summons and complaint
10 in this action.

11 14. Thus, complete diversity of citizenship exists between the parties as required under
12 28 U.S.C. § 1332(a)(1) because Plaintiff is a California citizen and Defendant COSTCO
13 WHOLESALE CORPORATION is a citizen of Washington.

14 15. Further, the amount in controversy requirement is satisfied whereas the Statement
15 of Damages is greater than five (5) million dollars, which exceeds \$75,000.00.

16 16. Therefore, with complete diversity of citizenship between opposing parties, and the
17 required amount in controversy exceeded, this matter is removable.

18 **VI. TIMELINESS OF REMOVAL**

19 17. A case is removable on diversity grounds if the initial pleading setting forth the
20 claim for relief alleges facts indicating diversity. (28 U.S.C. §§ 1332(a), 1446(b)(1).)

21 18. The Complaint was served on Defendant COSTCO WHOLESALE
22 CORPORATION on March 22, 2022. (See Proof of Service Summons, attached as **Exhibit D.**)
23 The Complaint disclosed Plaintiff's California citizenship, enabling Defendant to ascertain
24 diversity existed. (Complaint, ¶ 2.) However, the Complaint did not disclose that the amount in
25 controversy exceeded \$75,000.00.

26 19. On April 29, 2022, Defendant COSTCO WHOLESALE CORPORATION
27 received Plaintiff's Statement of Damages that confirmed Plaintiff alleges an amount in
28 controversy in excess of \$75,000.00. The Statement of Damages constitutes "other paper" as that

term is used 28 U.S.C. 1446 (b)(3). Defendant has until May 29, 2022, to remove the state court matter to federal court.

20. Defendant COSTCO WHOLESALE CORPORATION removed the matter from state to federal court on May 26, 2022.

21. Therefore, Defendant COSTCO WHOLESALE CORPORATION has timely removed this action to the United States District Court for the Eastern District of California.

VII. NOTICE TO PLAINTIFF AND TO STATE COURT

24. Witten notice of this filing will be provided to Plaintiff's Counsel of Record and a copy of the Notice of Removal will be filed with the Clerk of the Sacramento County Superior Court.

VIII. CONCLUSION

25. For the foregoing reasons, Defendant COSTCO WHOLESALE CORPORATION removes this action to the United States District Court for the Eastern District of California.

Dated: May 26, 2022

MATHENY SEARS LINKERT & JAIME LLP

By: /s/ Matthew C. Jaime
MATTHEW C. JAIME,
Attorneys for Defendant COSTCO
WHOLESALE CORPORATION

EXHIBIT A

FILED
Superior Court of California
Sacramento
03/14/2022
mws/klaker
By _____, Deputy
Case Number:
24-2022-00316617

1 NOLAN R. JONES, ESQ. / SBN: 309151
2 DREYER BABICH BUCCOLA WOOD CAMPORA, LLP
3 20 Bicentennial Circle
4 Sacramento, CA 95826
5 Telephone: (916) 379-3500
6 Facsimile: (916) 379-3599
7 DBBWC-ESERVICE@dbbwc.com

8 Attorneys for Plaintiff

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SACRAMENTO

11 KENNY DU,
12 Plaintiff,
13 v.

Case No.:
COMPLAINT

14 COSTCO WHOLESALE CORPORATION,
15 COSTCO WAREHOUSE NO. 464, and DOES 1
16 through 20, inclusive,
17 Defendants.

18 **FIRST CAUSE OF ACTION**

19 **(Personal Injury: KENNY DU)**

20 Plaintiff KENNY DU complains against Defendants COSTCO WHOLESALE CORPORATION,
21 COSTCO WAREHOUSE NO. 464 and DOES 1 through 20 and alleges as follows:

22 1. The true names and capacities -- whether individual, corporate, associate or
23 otherwise -- of Defendants DOES 1 through 20, are unknown to Plaintiff, who therefore sues such
24 DOES by such fictitious names. Plaintiff will amend this Complaint to show their true names and
25 capacities when the same have been ascertained. Each of the Defendants, and DOES 1 through
26 20, are legally responsible in some manner -- negligently, in warranty, strictly, or otherwise -- for
27 the incident that is the subject of this Complaint.

28 2. Plaintiff is now, and at all times herein mentioned was, a citizen of and resident
within the County of Sacramento, State of California. Plaintiff further alleges that each Defendant

1 is a citizen and resident of, or doing business within, the County of Sacramento, and State of
2 California. Defendant COSTCO WHOLESALE CORPORATION is a Washington state incorporated
3 corporation doing business within and throughout the State of California. The amount in
4 controversy is in excess of the minimal jurisdictional limits of this Court.

5 3. That it is unknown by Plaintiff at this time whether Defendants COSTCO
6 WHOLESALE CORPORATION, COSTCO WAREHOUSE NO. 464 and DOES 1 through 20 are doing
7 business as a partnership, corporation, or other type of entity, and Plaintiff will ask leave to
8 amend this pleading to set forth their true names and capacities when the same have been
9 ascertained.

10 4. Plaintiff is informed and believes and upon said information and belief alleges that
11 at all times herein mentioned Defendants COSTCO WHOLESALE CORPORATION, COSTCO
12 WAREHOUSE NO. 464 and DOES 1 through 20, and each of them are, and for a long time prior
13 thereto, were owners and/or in possession of the certain premises located at 7981 E Stockton
14 Blvd., Sacramento, California.

15 5. That Plaintiff is informed and believes and thereon alleges that, at all times herein
16 mentioned, Defendants DOES 1 through 10, and each of them, were acting within the course and
17 scope of employment by Defendants COSTCO WHOLESALE CORPORATION, COSTCO WAREHOUSE
18 NO. 464 and DOES 11 through 20, and each of them.

19 6. That on or about February 1, 2021, Plaintiff KENNY DU, while legally on the
20 premises as described hereinabove, walking across a foreseeable pedestrian route, slipped and fell
21 from liquid on the concrete at the Costco gas station number 2, causing injury and damages to
22 Plaintiff. The slip-and-fall was caused by a dangerous condition of the premises owned and
23 operated by Defendants and each of them. Plaintiff is informed and believes and thereon alleges
24 that on the day in question, the Defendants, their agents, employees and each of them, created
25 the dangerous condition that led to the slip-and-fall event. Plaintiff also alleges that Defendants
26 and each of them knew or should have known of said dangerous condition. Plaintiff further alleges
27 the dangerous condition existed for a sufficiently long period of time for Defendants to have
28 discovered, removed or remedied it, and Defendants' failure to do so constitutes negligence in

1 Defendant's maintenance of the area where the incident occurred. Plaintiff is informed and
2 believes and thereon alleges that on the day in question, the Defendants, their agents, and each
3 of them, knew or should have known of the improperly maintained area.

4 7. That at said time and place, Defendants COSTCO WHOLESALE CORPORATION,
5 COSTCO WAREHOUSE NO. 464 and DOES 1 through 20 and each of them, negligently caused,
6 permitted, constructed, managed and maintained, inspected, supervised, etc. said gas station
7 area permitting them to be in a dangerous, defective and hazardous condition in an area allowed
8 for usage of persons lawfully on the premises.

9 8. As a result of the negligence of Defendants, Plaintiff KENNY DU suffered personal /
10 bodily injuries, resulting in economic and noneconomic damages. Economic damages include, but
11 are not limited to, (1) past and future medical and/or ancillary related expenses, (2) past and
12 future income and/or earning capacity loss, (3) loss of ability to provide household services, and
13 (4) incidental and consequential damages and/or property damage and loss of use. Noneconomic
14 damages include, but are not limited to (1) past and future physical and mental suffering, (2) loss
15 of enjoyment of life, (3) physical impairment, (4) inconvenience, (5) anxiety, and (6) emotional
16 distress.

17 Plaintiff KENNY DU prays for judgment against Defendants for:

- 18 a. Noneconomic damages in excess of the jurisdictional limit of this Court;
19 b. All medical and incidental expenses according to proof;
20 c. All loss of earnings according to proof;
21 d. Prejudgment interest to the extent permitted by law;
22 e. All costs of suit; and
23 f. Such other and further relief as this Court may deem just and proper.

24
25 DATED: March 14, 2022

DREYER BABICH BUCCOLA WOOD CAMPORA, LLP

26
27 By: 
28

NOLAN R. JONES

EXHIBIT B

1 NOLAN R. JONES, ESQ. / SBN: 309151
2 **DREYER BABICH BUCCOLA WOOD CAMPORA, LLP**
3 20 Bicentennial Circle
4 Sacramento, CA 95826
5 Telephone: (916) 379-3500
6 Facsimile: (916) 379-3599
7 DBBWC-ESERVICE@dbbwc.com

8 Attorneys for Plaintiff

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SACRAMENTO

11 KENNY DU,

Case No.: 34-2022-00316817

12 Plaintiff,

**PLAINTIFF'S RESPONSES TO REQUEST
FOR STATEMENT OF DAMAGES, SET ONE**

13 v.

14 COSTCO WHOLESALE CORPORATION,
15 COSTCO WAREHOUSE NO. 464, and DOES 1
through 20, inclusive,

16 Defendants.

Complaint Filed: March 14, 2022
Trial Date: Not Assigned

17
18 **TO DEFENDANT COSTCO WHOLESALE CORPORATION:**

19 COMES NOW Plaintiff KENNY DU responds to Defendant's Request for Statement of
20 Damages Being Sought by Plaintiff hereto.

21
22 DATED: April 29, 2022

DREYER BABICH BUCCOLA WOOD CAMPORA, LLP

23
24 By: 
25 NOLAN R. JONES
26
27
28

- DO NOT FILE WITH THE COURT -
- UNLESS YOU ARE APPLYING FOR A DEFAULT JUDGMENT UNDER CODE OF CIVIL PROCEDURE § 585 -

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): NOLAN R. JONES, ESQ /SBN: 309151 (916) 379-3500 (916) 379-3599 Dreyer Babich Buccola Wood Campora, LLP 20 Bicentennial Circle Sacramento, CA 95826 ATTORNEY FOR (Name): Plaintiff, KENNY DU	TELEPHONE NO.:	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO STREET ADDRESS: 720 Ninth Street MAILING ADDRESS: CITY AND ZIP CODE: Sacramento, CA 95814 BRANCH NAME:		CASE NUMBER: 34-2022-00316817
PLAINTIFF: KENNY DU DEFENDANT: COSTCO WHOLESALE CORPORATION, et al		
STATEMENT OF DAMAGES (Personal Injury or Wrongful Death)		

To (name of one defendant only): COSTCO WHOLESALE CORPORATION

Plaintiff (name of one plaintiff only): KENNY DU

seeks damages in the above-entitled action, as follows:

- | | AMOUNT |
|--|-----------------|
| 1. General damages | |
| a. <input checked="" type="checkbox"/> Pain, suffering, and inconvenience..... | \$ 2,000,000.00 |
| b. <input checked="" type="checkbox"/> Emotional distress..... | \$ 2,000,000.00 |
| c. <input type="checkbox"/> Loss of consortium | \$ |
| d. <input type="checkbox"/> Loss of society and companionship (wrongful death actions only) | \$ |
| e. <input type="checkbox"/> Other (specify) | \$ |
| f. <input type="checkbox"/> Other (specify) | \$ |
| g. <input type="checkbox"/> Continued on Attachment 1.g. | |
| 2. Special damages | |
| a. <input checked="" type="checkbox"/> Medical expenses (to date) | \$ 100,000.00 |
| b. <input checked="" type="checkbox"/> Future medical expenses (present value) | \$ 500,000.00 |
| c. <input checked="" type="checkbox"/> Loss of earnings (to date) | \$ 20,000.00 |
| d. <input checked="" type="checkbox"/> Loss of future earning capacity (present value) | \$ 500,000.00 |
| e. <input type="checkbox"/> Property damage..... | \$ |
| f. <input type="checkbox"/> Funeral expenses (wrongful death actions only)..... | \$ |
| g. <input type="checkbox"/> Future contributions (present value) (wrongful death actions only) | \$ |
| h. <input type="checkbox"/> Value of personal service, advice, or training (wrongful death actions only) | \$ |
| i. <input type="checkbox"/> Other (specify) | \$ |
| j. <input type="checkbox"/> Other (specify) | \$ |
| k. <input type="checkbox"/> Continued on Attachment 2.k. | |
| 3. <input type="checkbox"/> Punitive damages: Plaintiff reserves the right to seek punitive damages in the amount of (specify) \$ | |
| when pursuing a judgment in the suit filed against you. | |

Date: April 29, 2022

NOLAN R. JONES, ESQ.
 (TYPE OR PRINT NAME)

(Proof of service on reverse)

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

Page 1 of 2

**PROOF OF SERVICE – CCP § 1013, 1013a, 2015.5
and California Rules of Court, Rule 2.306**

Du v. Costco Wholesale Corporation, et. al.
Sacramento County Superior Case No.: 34-2022-00316817

I, the undersigned, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action. I am an employee of Dreyer Babich Buccola Wood Campora, LLP and my business address is 20 Bicentennial Circle, Sacramento, CA 95826.

On the date below, I served the within document:

PLAINTIFF'S RESPONSES TO REQUEST FOR STATEMENT OF DAMAGES, SET ONE

On the parties in said action addressed as follows:

Matthew C. Jaime, Esq.
MATHENY SEARS LINKERT & JAIME LLP
3638 American River Drive
Sacramento, CA 95864-5901
Telephone: (916) 978-3434
Facsimile: (916) 978-3430

Attorneys for Defendant
COSTCO WHOLESALE CORPORATION

Email: mjaime@mathenysears.com
cc: rzapardiel@mathenysears.com
rladrido@mathenysears.com

☐ **BY FACSIMILE MACHINE (FAX):** On _____, 20__, at _____ a.m./p.m. by use of facsimile machine telephone number (916) 379-3599, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2.301 and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2.306, I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

☐ **BY MAIL:** I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true and correct copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Sacramento, CA, addressed as set forth above.

☒ **ONLY BY ELECTRONIC TRANSMISSION:** Only by e-mailing the document(s) to the person(s) at the e-mail address(es) listed based on notice provided by the California Judicial Council on April 17, 2020 that, during the Coronavirus (COVID-19) pandemic counsel may be unable to send or receive physical mail as usual, and is therefore using electronic mail (California Rules of Court, Appendix 1, Emergency Rule 12.) No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 29, 2022, at Sacramento, CA.


MELISSA EARLS

EXHIBIT C

FILED
Superior Court Of California,
Sacramento
04/12/2022
mwhltakor
By _____, Deputy
Case Number:
34-2022-00316817

Law Offices of
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Attorneys for Defendant, COSTCO WHOLESALE
CORPORATION

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

KENNY DU,

Plaintiff,

v.

COSTCO WHOLESALE
CORPORATION, COSTCO
WHAREHOUSE 464 and DOES 1 to 20,
inclusive,

Defendant.

Case No. 34-2022-00316817

ANSWER TO COMPLAINT

Complaint filed: 3/15/22
Trial date: TBD

Defendant COSTCO WHOLESALE CORPORATION [hereinafter "COSTCO"] hereby
sets forth its Answer and Affirmative Defenses to Plaintiff KENNY DU'S Complaint for Damages
and demands trial by jury.

I

COSTCO denies each and every, all and singular, generally and specifically, the allegations
in said Complaint, and each and every part thereof; denies that plaintiff has been injured or
damaged in any sum or manner whatsoever as a result of the action or inaction of COSTCO, and
further denies that plaintiff is entitled to any further relief whatsoever from COSTCO.

///

H

AS A FURTHER, SEPARATE, AND DISTINCT ANSWER AND DEFENSE to plaintiff's Complaint on file herein, and to each and every cause of action contained therein, COSTCO is informed and believes and thereon alleges, that at the time and place of the events described in plaintiff's Complaint, plaintiff was himself, careless, negligent or otherwise legally at fault, and that said carelessness, negligence or other legal fault on the part of plaintiff proximately caused or contributed to, in whole or in part, the injuries, losses and damages complained of, if any there are, by reason of these premises, plaintiff's Complaint is barred, or her recovery is reduced in direct proportion to the amount of contributory or other legal fault.

III

AS A FURTHER, SEPARATE, AND DISTINCT ANSWER AND DEFENSE to plaintiff's Complaint on file herein, and to each and every cause of action contained therein, COSTCO is informed and believes and thereon alleges, that at the time and place of the events described in plaintiff's Complaint, persons and entities as yet unknown to COSTCO were careless, negligent or otherwise legally at fault, and that such conduct proximately caused or contributed to the losses and damages, complained of by plaintiff, if any there are, and that liability should be apportioned among COSTCO and said persons and entities based upon respective percentages of fault.

IV

AS A FURTHER, SEPARATE, AND DISTINCT ANSWER AND DEFENSE to plaintiff's Complaint on file herein, and to each and every cause of action contained therein, COSTCO alleges that in the event plaintiff recovers judgment against COSTCO, said judgment should be apportioned under equitable principles of comparative fault based upon percentages of liability attributable to each defendant or responsible person or entity.

V

AS A FURTHER, SEPARATE, AND DISTINCT ANSWER AND DEFENSE to plaintiff's Complaint, COSTCO alleges that plaintiff's Complaint fails to state facts sufficient to state a cause of action against COSTCO.

VI

AS A FURTHER, SEPARATE, AND DISTINCT ANSWER AND DEFENSE to plaintiff's Complaint, COSTCO alleges that as to each and every cause of action alleged in plaintiff's Complaint, the court lacks personal jurisdiction over COSTCO.

VII

AS A FURTHER, SEPARATE, AND DISTINCT ANSWER AND DEFENSE to plaintiff's Complaint, COSTCO alleges that as to each and every cause of action alleged in plaintiff's Complaint, the court lacks subject matter jurisdiction over COSTCO.

VIII

AS A FURTHER, SEPARATE, AND DISTINCT ANSWER AND DEFENSE to plaintiff's Complaint, COSTCO alleges that plaintiff lacks capacity to sue for the claims set forth therein.

IX

AS A FURTHER, SEPARATE, AND DISTINCT ANSWER AND DEFENSE to plaintiff's Complaint, and to each and every cause of action contained therein, COSTCO alleges that plaintiff, with the exercise of reasonable diligence and effort, would have and could have mitigated the damages alleged in said Complaint, if any there are, and that the resultant damages, if any, complained of in said Complaint were directly and proximately caused by the failure, neglect and refusal of plaintiff to exercise reasonable diligence in an effort to mitigate the damages alleged.

X

AS A FURTHER, SEPARATE, AND DISTINCT ANSWER AND DEFENSE to plaintiff's Complaint on file herein, and to each and every cause of action contained therein, COSTCO is informed and believes and thereon alleges that the injuries of which plaintiff complains, are the proximate result of the acts, errors or omissions, negligence or other legal fault of parties, codefendants, persons, partnerships, corporations and entities, both named and unnamed. By virtue of the provisions of California Civil Code sections 1431 et seq. (Proposition 51, adopted June 3, 1986), COSTCO respectfully requests that damages, if any, be allocated and

1 apportioned amongst all causative factors and that COSTCO be found legally responsible only for
2 COSTCO's determined share of legal fault.

3 **XI**

4 **AS A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE** to
5 plaintiff's Complaint on file herein, COSTCO alleges that plaintiff's Complaint is barred by the
6 applicable statute of limitations set forth in the California Code of Civil Procedure.

7 **XII**

8 **AS A FURTHER, SEPARATE AND DISTINCT DEFENSE**, it is hereby alleged that
9 COSTCO did not have either actual or constructive notice, or had inadequate notice, of the alleged
10 dangerous condition described in the Complaint or that said condition had existed for a sufficient
11 time prior to the accident described in the Complaint for measures to have been reasonably taken
12 to protect against, remedy, or warn of the alleged condition.

13 **XIII**

14 **AS A FURTHER, SEPARATE AND DISTINCT DEFENSE**, it is hereby alleged that
15 at the time of the accident described in the Complaint, COSTCO did not have any care, custody,
16 control, or supervision over the area where said accident allegedly occurred.

17 **XIV**

18 **AS A FURTHER, SEPARATE AND DISTINCT DEFENSE**, it is hereby alleged that
19 the dangerous condition or defects allegedly existing on the premises described in the Complaint,
20 if said condition or defects existed, which is expressly denied, then said condition or defects were
21 or should have been open and obvious to plaintiff, and therefore no warning about said condition
22 or defects was necessary or required.

23 **XV**

24 **AS A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE** to
25 plaintiff's Complaint on file herein, the COSTCO alleges that at the time and place referred to in
26 plaintiff's Complaint, plaintiff voluntarily assumed the risk of injury and damage to himself and
27 that any injury or damage suffered by said plaintiff at said time and place was voluntarily assumed
28 by him.

XVI

AS A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE to plaintiff's Complaint on file herein, and to each and every purported cause of action contained therein, COSTCO alleges that the risk of injury created by the alleged condition of property was minor, trivial or insignificant in light of the surrounding circumstances and did not create a substantial risk of injury. Plaintiff is therefore barred entirely from recovery against COSTCO, or alternatively, plaintiff should have the recovery, if any, proportionally reduced.

XVII

AS A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE to plaintiff's Complaint on file herein, COSTCO alleges that COSTCO presently has insufficient knowledge and information upon which to form a belief as to whether COSTCO may have additional, as yet unstated, defenses. Accordingly, COSTCO reserves the right to assert additional defenses in the event discovery and investigation reveals a factual and legal basis for such affirmative defenses.

WHEREFORE, COSTCO prays:

1. Plaintiff take nothing against it by his Complaint;
2. Defendant has judgment for its costs of suit; and
3. Such other and further relief as the court deems just and proper.

Dated: April 12 2022

MATHENY SEARS LINKERT & JAIME LLP

By: 

MATTHEW C. JAIME,
Attorneys for Defendant COSTCO
WHOLESALE CORPORATION

DU v. COSTCO WHOLESALE CORPORATION
SACRAMENTO COUNTY CASE NO. 34-2022-00316817

PROOF OF SERVICE

I am a citizen of the United States and employed in Sacramento County. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 3638 American River Drive, Sacramento, CA 95864. On this date, I served:

ANSWER TO COMPLAINT

- ☐ **BY MAIL.** By placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box at Sacramento, California, addressed as set forth below. I am readily familiar with my firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date of postage meter date is more than 1 day after date of deposit for mailing in affidavit.
- ☐ **BY PERSONAL SERVICE.** I caused such document(s) to be personally hand delivered on this same date to the person(s) as set forth below.
- ☐ **BY FACSIMILE TRANSMISSION.** I transmitted such document(s) by facsimile machine to the facsimile number for the person(s) as set forth below.
- ☒ **BY ELECTRONIC MAIL:** by sending the attached document via electronic mail to the e-mail addresses set forth below:
- ☐ **BY OVERNIGHT COURIER.** By placing a true copy thereof enclosed in a sealed Federal Express envelope, with the correct fee to be paid, in the correct drop box at Sacramento, California, addressed as set forth below. I am readily familiar with my firm's practice of collection and processing Federal Express for overnight delivery.

Nolan Jones, Esq.
 Dreyer, Babich, Buccola, Wood & Campora,
 LLP
 20 Bicentennial Circle
 Sacramento, CA 95826

Phone: (916) 379-3500
 Fax: (916) 379-3599
 Email: dbbwc-eservice@dbbwc.com

Attorney for Plaintiff KENNY DU

I declare under penalty of perjury, according to the laws of the State of California, that the foregoing is true and correct.

Executed this 2 day of April, 2022, at Sacramento, California.


 Rhonda Ladrido

EXHIBIT D

Attorney or Party without Attorney: NOLAN R JONES ESQ, Bar #309151 DREYER, BABICH, BUCCOLA, WOOD & CAMPORA 20 BICENTENNIAL CIRCLE SACRAMENTO, CA 95826 Telephone No: 916-379-3500 FAX No: 916-379-3599		FILED For Court Use Only Superior Court of California, Sacramento 03/25/2022 lbaldwin1 By _____, Deputy Case Number: 34-2022-00316817	
Attorney for: Plaintiff		Ref. No. or File No.:	
Insert name of Court, and Judicial District and Branch Court: SACRAMENTO COUNTY SUPERIOR COURT			
Plaintiff: KENNY DU			
Defendant: COSTCO WHOLESALE CORPORATION			
PROOF OF SERVICE SUMMONS & COMPLAINT		Hearing Date:	Time:
		Dept/Div:	Case Number: 34-2022-00316817

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of the SUMMONS & COMPLAINT; CIVIL CASE COVER SHEET; ORDER RE: DELAY IN SCHEDULING INITIAL CASE MANAGEMENT CONFERENCE; ADR INFORMATION PACKAGE; PROGRAM CASE NOTICE
- Party served: COSTCO WAREHOUSE NO, 464
 - Person served: ANDREW SUZA, MANAGER, White, Male, 45 Years Old, Brown Hair, Blue Eyes, 5 Feet 9 Inches, 180 Pounds
- Address where the party was served: 7981 E. STOCKTON BLVD.
SACRAMENTO, CA 95823
- I served the party:
 - by substituted service. On: Mon., Mar. 21, 2022 at: 1:10PM by leaving the copies with or in the presence of: ANDREW SUZA, MANAGER, White, Male, 45 Years Old, Brown Hair, Blue Eyes, 5 Feet 9 Inches, 180 Pounds
 - (1) (Business) a Person in charge at least 18 years of age apparently in charge of the office or usual place of business of the person served. I informed him or her of the general nature of the papers.
 - (4) A declaration of mailing is attached.
- The "Notice to the Person Served" (on the Summons) was completed as follows:

on behalf of: COSTCO WAREHOUSE NO, 464

Other: BUSINESS ORGANIZATION, FORM UNKNOWN.

- Person Who Served Papers:
 - MICHAEL LYNN HENRY



2300 P-Street
 Sacramento, CA 95816
 (916) 498-0808
 FAX (916) 498-0817

Recoverable Cost Per CCP 1033.5(a)(4)(B)

- The Fee for Service was: \$38.00
- I am: (3) registered California process server
 - Independent Contractor
 - Registration No.: 2019-24
 - County: Sacramento

- I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Mon, Mar. 21, 2022

Attorney or Party without Attorney: NOLAN R JONES ESQ, Bar #309151 DREYER, BABICH, BUCCOLA, WOOD & CAMPORA 20 BICENTENNIAL CIRCLE SACRAMENTO, CA 95826 Telephone No: 916-379-3500 FAX No: 916-379-3599				For Court Use Only	
Attorney for: Plaintiff					
Insert name of Court, and Judicial District and Branch Court: SACRAMENTO COUNTY SUPERIOR COURT					
Plaintiff: KENNY DU Defendant: COSTCO WHOLESALE CORPORATION					
PROOF OF SERVICE By Mail		Hearing Date:	Time:	Dept/Div:	Case Number: 34-2022-00316817

- I am over the age of 18 and not a party to this action. I am employed in the county where the mailing occurred.
- I served copies of the SUMMONS & COMPLAINT; CIVIL CASE COVER SHEET; ORDER RE: DELAY IN SCHEDULING INITIAL CASE MANAGEMENT CONFERENCE; ADR INFORMATION PACKAGE; PROGRAM CASE NOTICE
- By placing a true copy of each document in the United States mail, in a sealed envelope by First Class mail with postage prepaid as follows:
 - Date of Mailing: Mon., Mar. 21, 2022
 - Place of Mailing: SACRAMENTO, CA 95816
 - Addressed as follows: COSTCO WAREHOUSE NO, 464
7981 E. STOCKTON BLVD.
SACRAMENTO, CA 95823
- I am readily familiar with the business practice for collection and processing of correspondence as deposited with the U.S. Postal Service on Mon., Mar. 21, 2022 in the ordinary course of business.
- Person Serving:
 - LAURI GREENBERG
 - MOE'S PROCESS SERVING, INC.
2300 P STREET
SACRAMENTO, CA 95816
 - 916 498-0808, FAX 916-498-0817

Recoverable Cost Per CCP 1033.5(a)(4)(B)

- The Fee for Service was: \$38.00
- I am: (3) registered California process server
 - Employee
 - Registration No.: 98
 - County: Sacramento

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Mon, Mar. 21, 2022

RECEIVED
CIVIL DROP BOX

2022 MAR 25 PM 2:04

GOSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY